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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,109

06/30/2005

Charles Zdzislaw Lobo

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EXAMINER

BRYANT, DOUGLAS J.

ART UNIT

PAPER NUMBER

4123

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,109	Applicant(s) LOBOZ ET AL.	
	Examiner DOUGLAS BRYANT	Art Unit 4123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/30/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Construction

The following element in claims 6 and 7 are not construed under 35 U.S.C 112, 6th paragraph because “for” was not used:

- a) Regarding claim 6: line 2, “association means”, line 4, “allocation means”
- b) Regarding claim 7: line 2, “comprising means”, line 4, “allocation means”

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-12 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention.

Regarding claim 1, while the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to a particular machine or apparatus or (2) transform a particular article to a different state or thing (See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed Cir. 2008)). The instant claims neither transform a particular article nor positively tie to a particular machine or apparatus and therefore do not qualify as a statutory process.

Regarding claims 6, the claim is directed to a “system” or machine, but fails to disclose physical “things”. The claim elements association means and allocation means are nothing more than software. Since the body of the claim only recites software elements, and that it therefore is not any of a process, machine, manufacture, or

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composition of matter. Since under 35 U.S.C. 101, a machine is defined as a physical device or a combination of devices having functionalities to effect an action or a result, and the software is not physical devices or objects. Thus, the claim only recites software per se (descriptive material covered in MPEP 2106.01), which constitute as non-statutory subject matter.

Regarding claim 10, while the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to a particular machine or apparatus or (2) transform a particular article to a different state or thing (See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed Cir. 2008)). The instant claims neither transform a particular article nor positively tie to a particular machine or apparatus that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

Regarding claim 11, the claimed invention in claim 11 is a computer program lacking the necessary physical components (hardware) required for execution. Since claim 11 is clearly not a process, machine, manufacture or a composition of matter, it fails to fall within a statutory category and thus non-statutory.

Regarding claim 12, while the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to a particular machine or apparatus or (2) transform a particular article to a different state or thing (See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed Cir. 2008)). The instant claims neither transform a particular article nor positively tie to a particular machine or apparatus that accomplishes the claimed method steps, and therefore do not qualify as

a statutory process. A computer readable medium is an insignificant extra-solution activity that will not transform an unpatentable principle into a patentable process.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Lam (Lam) US 2004/0015976 A1.

With respects to claim 1, Lam teaches a method for processing a transaction in a transaction processing system, comprising the steps of, for a plurality of transaction types, associating each one of the plurality of transaction types with at least one of a plurality of central processing units (Page 1, paragraph 3, lines 7-9; figure 3) and, on receipt of a transaction request from a client, determining the transaction request type, locating the associated central processing unit, and forwarding the transaction request to the associated central processing unit (Page 1, paragraph 3, lines 9-11; figure 3).

With respects to claim 2, Lam teaches a method in accordance with claim 1, comprising the further step of measuring the resource usage of a particular transaction type (page 2, paragraph 18, lines 20-21) and utilizing the resource usage data to

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allocate the transaction type to a central processing unit (page 2, paragraph 19, lines 24-26).

With respects to claim 3, Lam teaches a method in accordance with claim 2, wherein the resource usage data includes data indicative of the number of transactions of a particular type are processed relative to other transaction types (Page 1, paragraph 7, lines 3-6).

With respects to claim 4, Lam teaches a method in accordance with claim 3, wherein the resource usage data includes data indicative of the amount of computing resources required to process a transaction (Page 2, paragraph 19, lines 20-23).

With respects to claim 5, Lam teaches a method in accordance with claim 4, wherein at least one less intensive transaction type shares processing time on a CPU with at least one another less intensive transaction type (Page 2, paragraph 19, lines 24-26; paragraph 20, lines 4-7).

With respects to claim 6, Lam teaches a system for processing transactions in a transaction processing system, comprising, association means arranged to associate each one of a plurality of transaction types with at least one central processing unit (page 2, paragraph 17, lines 4-6), and allocation means arranged, on receipt of a transaction request from a client, to determine the transaction request type (page 2, paragraph 17, lines 1-3), locate the associated central processing unit (page 2, paragraph 17, lines 9-11), and forward the transaction request to the associated central processing unit (page 2, paragraph 17, lines 8-9).

With respects to claim 7, Lam teaches a system in accordance with claim 6, further comprising means to obtain resource usage data of at least one transaction type, wherein the resource usage data is employed by the allocation means to allocate the transaction type to a central processing unit (page 3, paragraph 26, lines 5-8).

With respects to claim 8, Lam teaches a system in accordance with claim 7, wherein the resource usage data includes data indicative of the number of transactions of a particular type which are processed relative to other transaction types (page 3, paragraph 26, lines 3-5).

With respects to claim 9, Lam teaches a system in accordance with claim 8, wherein the resource usage data includes data indicative of the amount of computing resources required to process a transaction type (page 2, paragraph 19, lines 19-21).

With respects to claim 10, Lam teaches a method for affinitizing a transaction type to a central processing unit, the method comprising the steps of, for each transaction type, providing resource usage data indicative of the amount of computing resources required to process a transaction type (page 2, paragraph 19, lines 7-9), and using the resource usage data to associate each transaction type to at least one central processing unit (page 2, paragraph 19, lines 23-26).

With respect to claims 11, it talks about a computer program arranged, when loaded on a computing system (Page 1, paragraph 16, lines 1-5), to implement the method of any one of claims 1 to 5, and it is rejected under the same rationale as applied to claims 1 thru 5.

With respect to claims 12, it talks about a computer readable medium providing a computer program in accordance with claim 11 (Page 1, paragraph 16, lines 1-5), and is rejected under the same rationale as applied to claim 1 thru 5.

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. Guck et al. (U.S. Patent No. 6230201) and Georgiadis et al. (U.S. Patent No. 5283897) teach methods of assigning transaction types to a processor. Peled et al. (U.S. Publication No. 2002/0023118, Haigh (U.S. Patent No. 5793861), and Togasaki (U.S. Publication No. 2003/0088672) teach methods of routing transactions utilizing shared resources.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS BRYANT whose telephone number is (571)270-7707. The examiner can normally be reached on Mondays thru Fridays from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Robertson, can be reached on 571-272-4186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David L. Robertson/
Supervisory Patent Examiner
Art Unit 4123

/D. B./

Examiner, Art Unit 4123